

REMARKS

Applicant appreciates the consideration of the present application afforded by the Examiner. Claims 1-13 and 15-28 were pending prior to the Office Action and remain pending. Claims 1, 3, 5-7, 16, and 20-25 have been amended through this Reply. Claims 1, 3, 5-7, 16, and 20-25 are independent.

Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

Claim Rejections - 35 U.S.C. § 103(a)

The Office Action rejects claims 1-13, 20, and 26-28 under 35 U.S.C. § 103(a) as allegedly unpatentable over Maissel et al. (US 6,637,029) in view of Bedard (US 5,801,747), and further in view of Gutta et al. (US 2002/0194586); rejects claims 15, 16, and 21-25 under § 103(a) as allegedly unpatentable over Maissel, Bedard, and Gutta, and further in view of Blahut et al. (US 5,446,490); and rejects claims 17-19 under § 103(a) as allegedly unpatentable over Maissel, Bedard, Gutta, and further in view of Itakura et al. (US 6,157,946).

Applicant submits the Examiner has failed to establish a *prima facie* case of obviousness and traverses these rejections.

As amended through this Reply, independent claim 1 recites a data output apparatus comprising *inter alia* the features of

a preference score vote receiving unit receiving a user-indicated vote of preference score of output data representing a degree of preference for particular output data;

a preference score counting unit counting the vote of preference score received by said preference score vote receiving unit for the particular output data over time;

an output unit outputting data based on receipt of a data switch request from a user to switch the data being output; and

a switch destination data determining unit determining a switch destination corresponding to data to be output by said output unit, based on a result of counting by said preference score counting unit

(Emphasis added.)

In the Office Action, the Examiner correctly recognizes that Maisell and Bedard fail to disclose the feature of “a user-indicated vote representing a degree of preference,” and he relies on Gutta to allegedly teach this feature (see Office Action, page 4).

As amended, independent claim 1 recites *inter alia*, “receiving a user-indicated vote of preference score of output data representing a degree of preference for particular output data” and “counting the vote of preference score received by said preference score vote receiving unit for the particular output data over time.” In other words, according to aspects of the claimed invention, a user indicates his or her vote of preference score for particular data that is output and viewed by the user. This may occur multiple times, i.e., the user may make further votes of preference for particular output data. Thus according to the claimed invention, a preference score counting unit is provided for counting the vote of preference score received by the preference score receiving unit over time.

Gutta discloses a system for automatically generating recommendations of a set of entertainment options (i.e., content) from a larger set of entertainment options based on user preferences (see Abstract). The Office Action primarily relies on Gutta’s recitation in paragraph 0021 that “a user 40 may rank order entertainment options by user preference” to allegedly cover the user-indicated vote of preference of the claimed invention (see Office Action, page 4). However, rank ordering by manipulating a user profile is **not** the same as the vote-counting aspect of the present invention. Gutta fails to teach or suggest that any user-indicated “votes” for particular output data are ever received over time or that they are counted when determining a switch destination for outputting other data. Instead, Gutta discloses that

“users 40 with appropriate access rights may be allowed to modify their profile, by way of example and not limitation selecting from a set of predefined preference categories... Additionally, a user 40 may rank order entertainment options by user preference”

(Gutta, paragraph 0021). In other words, Gutta “orders” a list of options according to their “ranks” assigned according to user preference. At best, Gutta may teach that assigning ranks is simply performed by a user accessing his or her profile and manipulating or otherwise assigning

entertainment options into a preferred order. This is clearly not the same as receiving user-indicated “votes” of preference over time and then counting these votes when determining a switch destination. Applicant respectfully submits these features are simply not taught or suggested by the prior art of record, alone or in combination.

For a rejection under 35 U.S.C. § 103 to be proper, a *prima facie* case of obviousness must be established (*see, e.g.*, MPEP § 2142). One requirement to establish *prima facie* case of obviousness is that the prior art references, when combined, must teach or suggest all claim limitations (*see, e.g.*, MPEP § 706.02(j); MPEP § 2142). Thus, if the cited references fail to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

In this instance, the combination of Maissel, Bedard, and Gutta fails to teach or suggest each and every limitation of claim 1. Independent claims 3, 5-7, 16, and 20-25 are comparable to claim 1 at least with respect to the rationale presented above and are distinguishable from the prior art at least for the same reasons presented herein.

Further regarding Claims 1, 3, and 20-25:

In addition to the aforementioned limitations, claim 1 as amended further recites *inter alia* the feature where

said switch destination is determined such that data of high preference score has high probability to be output when switched to the determined switch destination, wherein said probability is associated with the result of counting of the preference score by said preference score counting unit.

(Emphasis added.)

Applicant respectfully submits that the cited prior art fails to teach or suggest these claimed features, alone or in combination. As previously discussed, the Examiner correctly recognizes the deficiencies of Maissel and Bedard concerning the features of switching data to be output to a destination determined based on counting a user-indicated vote of preference score. Further, although Gutta may teach “rank ordering” (which Applicant again asserts is clearly distinguishable from a user-indicated vote of preference), the reference fails to teach or suggest that the probability of particular data being output when switched to the determined switch destination is based on the result of the counting of the preference score. The rank ordering in

Gutta merely indicates a preference order for content, which is not the same as a **probability** regarding whether particular data will be output when switched to the determined switch destination.

Accordingly, Applicant submits that claim 1 is further distinguishable from the combination of Maissel, Bedard, and Gutta. Independent claims 3 and 20-25 are comparable to claim 1 at least with respect to the features discussed above and are distinguishable from the prior art at least for the same rationale.

Based on the amendments and arguments presented herein, Applicant submits that claims 1, 3, 5-7, 16, and 20-25, and likewise the claims dependent thereon, are patentable over the prior art and respectfully request that the rejection of said claims under §103(a) be withdrawn.

CONCLUSION

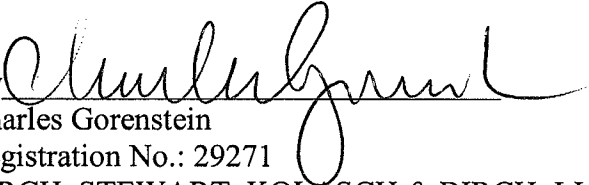
All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Notice of same is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John R. Sanders (Reg. No. 60,166) at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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